IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7700 of 1994

Between:

1 Geetha Cotton Company, rep.by its Partner, K.Nagnath, S/o K.Shankar Rao, age 23 years

2 Akash Industries rep. by its Proprietor K.Nagnath, S/o K.Shankar Rao, age 23 years

3 Krishna Cotton Company rep. by its Proprietor Smt Janabai, W/o K.Shankar Rao, age 45 years

4 Sri Shiva Sanker Industries rep. by its Partner C.Narayan, S/o Bhojana, age 44 years

5 Vijay Cotton Traders rep. by its Partner Ramesh, S/o Digamber Rao, age 34 years

6 Uma Shankar Industries rep. by its Partner Sandesh, S/o Vishwamber Rao, age 24 years

7 Sri Jagadamba Oil Industries rep. by its Partner Muralidher, S/o Bhikular, age 36 years

8 Marothi Oil Industries rep. by its Proprietor Balkishan, S/o Jagnath, age 36 years

9 Sri Tirumala Cotton Industries rep. by its Partner K.Ramuloo, S/o Yellaiah, age 58 years

10 Meenakshi Oil Mill rep. by its Partner Kishan Rangawar, S/o Ganpathi, age 48 years

11 Vishnu Prakash Bajaj rep. by its Partner Vishnu Prakash, S/o Ratnalal, age 42 years,

12 M/s Maruthi Cotton Company, rep. by its Partner Madanlal, S/o Kalyanamal

Tiwari, age 50 years

13 Sacheen Industries rep. by its Proprietor Sainath, S/o Nagnath Rao, age 38 years

14 M/s.Mahalaxmi Udyog Oil Industries, rep. by its Partner Sathyanand, S/o Digambar Patel, age 28 years

15 Sri Balaji Ginning Factory, rep. by its Partner Kamal Naryan, S/o Kishanlal, age 29 years

16 Kailash Ginning Factory rep. by its partner Subhash, S/o Banwarilal, age 32 years

17 Jagdish Cotton Company rep. by its Partner Gopal, S/o Mukandas, age 30 years

18 Bhagya Laxmi Cotton Company rep. by its Partner Y.Ganga Reddy, S/o Rajanna, age 38 years

19 Marudhar Cotton Company rep. by its Partner Sugan Chand, S/o Sankarlal, age 43 years

All are resident of Bhainsa

..... PETITIONERS

AND

1 Commissioner of Commercial taxes, Nampally, Hyderabad

2 Deputy Commissioner, Commercial Taxes Department,

Adilabad

3 Commercial Tax Officer, Nirmal, Nizamabad District

4 Assistant Commercial Tax Officer, Observation Check Post,

Bhainsa

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein this Court may be pleased to issue appropriate writ, order or direction declaring that the petitioners are not liable for Central Sales Tax on consignment transfers by virtue of circular issued by the 1st respondent in CCT's ref No.AI(3)/22/94, dated 4.3.1994 and consequently interdict the respondents from collecting Central Sales Tax on consignment transfers of cotton seeds and cotton seed cake effected other than by way of sale, at check post observation point or at any other point by relying on the said circular dt. 4.3.1994 and pass such other order or orders as the Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.S.R.ASHOK

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court made the following O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties. Counter has also been filed.

The grievance of the petitioners seems to be that respondents are stopping the vehicles and collecting the tax for goods, which are not exigible to Central Sales Tax, as these goods are meant for consignment sale.

The relief claimed in the writ petition was:

> *"For the above reasons, it is prayed that the Hon'ble Court may be pleased to issue appropriate writ, order or direction declaring that the petitioners are not liable for Central Sales Tax on consignment transfers by virtue of circular issued by the 1st respondent in CCT's ref.No.AI(3)/22/94, dated 4.3.1994 and consequently interdict the respondents from collecting Central Sales Tax on consignment transfers of cotton seeds and cotton seed cake effected other than by way of sale, at check post observation point or at any other point by relying on the said circular dt.4.3.1994."*

In the counter, it has been stated that nobody is made to pay tax, who is not exigible to tax. However, the right of the respondents to check the consignments flows from the provisions of the Central Sales Tax Act, 1957 and Rules made there under.

In these circumstances, we dispose of the writ petition while upholding the right of the respondents to check the vehicles for any possible violation of law and evasion. We, however, hold that no amount shall be collected from the persons involved, if the consignments are not exigible to tax, which would depend on facts of each case. No order as to costs.

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(Bilal Nazki, J)

26th August, 2004.

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(P.S.Narayana,J)

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To

1 Commissioner of Commercial taxes, Nampally, Hyderabad

2 Deputy Commissioner, Commercial Taxes Department,

Adilabad

3 Commercial Tax Officer, Nirmal, Nizamabad District

4 Assistant Commercial Tax Officer, Observation Check Post,

Bhainsa

5 Two C.Cs to the Government Pleader for Commercial Taxes,

High Court Buildings, A.P., Hyderabad (OUT)

6 Two C.D copies